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DEPARTMENT OF EDUCATION

Native Hawaiian Career and Technical Education Program;

Final Waiver and Extension of Project Period

AGENCY: Office of Vocational and Adult Education,

Department of Education.

ACTION: Notice.

Overview Information:

Final waiver and extension of project period for the Native Hawaiian Career and Technical Education Program

Catalog of Federal Domestic Assistance (CFDA) Number:

84.259A.

SUMMARY: For 36-month projects funded in fiscal year (FY)

2009 under the Native Hawaiian Career and Technical

Education Program (NHCTEP), the Secretary hereby waives 34

CFR 75.261(c)(2) in order to extend the project period of

these current NHCTEP grants for an additional 12 months.

This will enable the eight current NHCTEP grantees to seek

FY 2012 continuation awards for their current projects

through FY 2013, and we will not announce a new NHCTEP

competition in FY 2012.

DATES: This notice of final waiver and extension of

project period is effective [INSERT DATE OF PUBLICATION IN

THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Linda Mayo. Telephone: (202) 245-7792, or by e-mail: linda.mayo@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

On February 16, 2012, we published a notice in the Federal Register (77 FR 9214) (February 2012 notice) proposing to waive 34 CFR 75.261(c)(2) as it applies to NHCTEP. This regulation restricts project period extensions involving the obligation of additional Federal funds. In that notice, the Secretary also proposed to extend the project period of NHCTEP grants for an additional 12 months to enable the eight current NHCTEP grantees to seek FY 2012 continuation awards for their projects through FY 2013.

Public Comment: In the February 2012 notice, the Secretary invited comments about the potential effect that this proposed project period waiver and extension would have on NHCTEP and on applicants that may be eligible to apply for grant awards under any new NHCTEP notice inviting applications, should there be one. We received three comments in response. Generally, we do not address

comments that raise concerns not related to the proposed waiver and extension.

Analysis of Comments and Changes:

Comment: Two commenters wrote in support of the proposed waiver and extension, discussed the benefits and accomplishments of current NHCTEP projects, and suggested that an extension of the current project period would allow grantees to continue their work and expand on their accomplishments.

Response: We agree with the commenters that extending the current NHCTEP grant period will allow current NHCTEP grantees to request continuation awards with which they could continue to work toward accomplishing the goals and objectives stated in their 2009 NHCTEP grant applications.

Change: None.

Comment: One commenter, while not addressing the Department's proposed waiver and extension, expressed a concern about the Department's use of the term "Native Hawaiian" in NHCTEP, asserting that the term "Native Hawaiian" is a racial or ethnic classification that the Department should not be using, in light of applicable U.S. Supreme Court rulings the commenter cited. The commenter requested that, unless the Department was following statutory terms explicitly requiring the use of what the

commenter referred to as the "Native Hawaiian classification," it should not apply that classification in NHCTEP. The commenter requested that the Department instead make NHCTEP grants available to all Hawaiians who meet certain socioeconomic or other criteria.

Response: Although this comment is not germane to the Department's proposed waiver and extension, we choose to address it in order to provide further clarification on the NHCTEP grant award authority. As stated in our February 2012 notice, the Department awards NHCTEP grants under authority of section 116(h) of the Carl D. Perkins Career and Technical Education Act of 2006 (Perkins Act or Act) (20 U.S.C. 2326(h)). Section 116(h) of the Act states that: "the Secretary shall award grants or enter into contracts with community-based organizations primarily serving and representing Native Hawaiians to plan, conduct and administer programs, or portions thereof, which are authorized by and consistent with the provisions of [section 116(h) of the Act,] for the benefit of Native Hawaiians" (20 U.S.C. 2326(h)) (Emphasis added). In accordance with this statutory authority, in its March 24, 2009, notice inviting applications published in the Federal Register (74 FR 12333) (March 2009 notice), the Department announced the availability of grants for community-based

organizations primarily serving and representing Native Hawaiians for the benefit of Native Hawaiians. Subject to the availability of funds for this program, the Department will continue to make NHCTEP awards to community-based organizations primarily serving and representing Native Hawaiians for the benefit of Native Hawaiians, as specifically mandated by statute.

Change: None.

Background

NHCTEP funds support grants to community-based organizations primarily serving and representing Native Hawaiians to plan, conduct, and administer career and technical education programs, or portions thereof, as authorized by section 116(h) of the Perkins Act. The eight current NHCTEP grantees were selected based on the March 2009 notice. The project period for the eight NHCTEP grantees is scheduled to end in FY 2012. For these NHCTEP projects, the Secretary waives the requirement of 34 CFR 75.261(c)(2), the regulation that generally prohibits project period extensions involving the obligation of additional Federal funds, in order to extend the current NHCTEP project period for an additional 12 months. This waiver and extension will allow the eight current NHCTEP

grantees to seek continuation awards in FY 2012 for project periods through FY 2013.

The Secretary's waiver of 34 CFR 75.261(c)(2) and extension of the current NHCTEP project period means that: (1) current NHCTEP grantees will be authorized to request and receive NHCTEP continuation awards in FY 2012 for project periods through FY 2013; (2) we will not announce a new NHCTEP competition to make new awards in FY 2012; (3) the March 2009 notice will continue to govern current projects during the extension year; and (4) the eight currently-approved applications selected based on the March 2009 notice will govern NHCTEP continuation activities.

The March 2009 notice: (1) established a project period of up to 36 months and reiterated that funding for multi-year awards would be dependent on a grantee meeting the requirements of 34 CFR 75.253 (continuation of a multi-year project after the first budget period); (2) explained the requirements of the program; (3) described the evaluation and reporting requirements; and (4) established the Government Performance and Results Act (GPRA) performance indicators for NHCTEP.

With this waiver and extension of the project period, the current eight NHCTEP grantees may request continuation awards for one additional project year, through FY 2013,

with FY 2012 funds Congress has appropriated under the current statutory authority. We will consider these continuation award requests under the current statutory authority. Any requests for continuation awards will be subject to the requirements of 34 CFR 75.253, including the requirement that each grantee demonstrate that it is making substantial progress performing its NHCTEP grant activities based on the requirements in the March 2009 notice.

We will make decisions regarding continuation awards based on information provided in grantee requests for continuation awards, including information provided in program narratives, budgets and budget narratives, and performance reports. Any activities to be carried out during the continuation year must be consistent with, or be a logical extension of the scope, goals, and objectives of, each grantee's application as approved in the 2009 NHCTEP competition.

Waiver of Delayed Effective Date

The Administrative Procedure Act requires that a substantive rule must be published at least 30 days before its effective date, except as otherwise provided for good cause (5 U.S.C. 553(d)(3)). During the 30-day public comment period on the notice of proposed waivers and extension of project period, two of the three comments

submitted supported the proposed waiver and extension of the project period, and one commenter did not address the issue. Except for minor editorial and technical revisions, there are no differences between the proposed and final notices of waiver and extension of the project period for NHCTEP. In addition, given the fact that the additional period of funding is only for a 12-month period, and to be able to make timely continuation grants to the eight entities affected, the Secretary has determined that a delayed effective date would be unnecessary and contrary to the public interest.

Regulatory Flexibility Act Certification

The Secretary certifies that the waiver and extension and the activities required to support an additional year of funding will not have a significant economic impact on a substantial number of small entities.

The small entities that will be affected by this waiver and extension are the eight currently-funded NHCTEP grantees.

The Secretary further certifies that the waiver and extension will not have a significant economic impact on these NHCTEP entities because the waiver and extension impose minimal compliance costs to extend projects already in existence, and the activities required to support the

additional year of funding will not impose additional regulatory burdens or require unnecessary Federal supervision. Furthermore, the costs of carrying out these activities could be paid for with program funds.

Paperwork Reduction Act of 1995

This notice of waiver and extension does not contain any information collection requirements.

Intergovernmental Review

The NHCTEP is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed under FOR FURTHER INFORMATION CONTACT.

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You may also access documents of the Department published in the Federal Register by using the article search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 20 U.S.C. 2326(h).

Dated: May 18, 2012

Johan Uvin,
Delegated Authority to Perform the
Functions and Duties of the
Assistant Secretary for Vocational
and Adult Education.

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